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10/729,826	12/05/2003	Mark E. Herrmann	R0586-701010	8536

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EXAMINER

CHERIYAN JR, THOMAS K

ART UNIT	PAPER NUMBER
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3714

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ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/729,826	Applicant(s) HERRMANN ET AL.	
	Examiner Thomas K. Cheriyan	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-85 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-85 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>See Continuation Sheet</u> . | 6) <input type="checkbox"/> Other: _____ |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date :11/15/2004;
2/27/2006; 5/11/2006; 2/26/2007; 1/2/2008;.

DETAILED ACTION

Claim Objections

Claim 1 is objected to because of the following informalities: the second paragraph of claim 1 states "... the at least one game card..." is grammatically incorrect. Examiner will interpret the claim with "the" removed to make it grammatically correct. Appropriate correction is required.

Claim 4 is objected to because it is grammatically incorrect. Appropriate correction is required.

Claim 26 is objected to because "kiosk" is repeated twice in a set of items and therefore is redundant. Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-8 and 79-85 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 1 states that "the act of determining the game card further comprises an act of determining content of the game card" as well as other statements in claim 1 related to "determining" which is imposed onto a player. The act of a player making any kind of determination is non-statutory subject matter and cannot be patented. Since claims 2-8 also mention the step of

"determining" and all depend from independent claim 1 and 79, claims 1-8 and 79-85 are rejected respectfully .

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moore (US 20040059445 A1) in view of Fioretti (US 5857911 A) and Metke (US 6565435 B2).

Regarding claim 1, 71, 72, Moore in combination with Fioretti and Metke discloses a method for conducting a game, the game including one or more players

and involving, for each of the one or more players (**Moore, Abstract**), at least one game card having a plurality of selectable content, the method comprising acts of:

determining, for at least one of the one or more players, the at least one game card having a pattern (**Moore, Paragraph 0033**) , wherein the act of determining the game card further comprises an act of determining content of the game card (**It would be obvious that the player would make the act of determination what content is on the game card.**);

determining, prior to a game session, a winning pattern (**Moore, Paragraph 0033**);

drawing winning cell content from a predetermined set of cell content (**Moore, Paragraph 33, "...randomly selected numbers are called in succession by the game sponsor or operator."**);

determining if, for the at least one player, whether the pattern of cell content on the game card matching the drawn winning cell content matches the winning pattern (**Moore, Paragraph 0040, "When the game computer or an individual participant (using the keyboard 22 or otherwise notifying the game operator) determines that one or more cards has achieved the winning pattern, "bingo" is called and the common information display 10 is updated to provide real-time notification to participants regarding the existence and location of the winner at the game site."**; and

if so, determining a payout (**Moore, Paragraph 0040, "the game terminates, again preferably automatically, and proceeds to a post-game cycle wherein prizes are credited to the winner or winners"**).

Regarding claims 2, 80, Moore in combination with Fioretti and Metke discloses the act of determining a payout further comprises an act of determining the payout based upon fixed odds of winning (**Moore. Paragraph 0002. It would be obvious for a player to make the determination his odds of winning since the player knows how many people are playing with him as well as the range of numbers that are randomly being drawn for the game.**).

Regarding claim 3, Moore in combination with Fioretti and Metke discloses the act of determining a payout further comprises an act of determining the payout based upon variable odds of winning (**Moore. Paragraph 0002. It would be obvious for a player to make the determination his odds of winning since the player knows how many people are playing with him as well as the range of numbers that are randomly being drawn for the game.**).

Regarding claims 4, 82, Moore in combination with Fioretti and Metke discloses determining the content of the game card further comprises automatically choosing at least one portion of the content without at least one player choosing the at least one portion.

Moore does not disclose allowing a player to choose at least one portion of a game card but Fioretti does (Fioretti, Lines 26-31).

The motivation for combining Moore with Fioretti is because both are networked, computer based, multiplayer, bingo type games.

Therefore, it would be obvious to combine the teachings of Fioretti with Moore because it would allow for enhanced game play and customizability for the player.

Regarding claim 5, Moore in combination with Fioretti and Metke disclose the game includes a plurality of game cards including at least one game card, and wherein the act of determining at least one game card includes an act of ensuring that the content of at least one game card is unique **(Moore, Paragraph 0033. It would also be obvious in the game of Bingo for a player with one or more game cards to make sure that each game card is unique to increase his/her chances of winning.)**.

Regarding claims 6, 83, Moore in combination with Fioretti and Metke disclose the game session is conducted without interaction of at least one player **(Moore, Paragraph 0006 talks about when Bingo numbers are randomly being drawn, the numbers are automatically marked on the player's game card and therefore, does not require any interaction of the player.)**.

Regarding claims 7, 66, 77, 84, Moore in combination with Fioretti and Metke disclose an act of providing entry of at least one player in the game using an alternative method of entry (AMOE).

Moore does not disclose an AMOE but Metke does (Re claim 1: Metke discloses a method for conducting a game, the method comprising acts of

providing a primary method of entry of at least one player in the game (non-free play, inherent for video arcades, see col. 1, lines 13-24); providing, to the at least one player, an alternative method of entry (AMOE) to the game (free play or free entry, see col. 1, lines 51-67); and executing the game for the at least one player (see step 110 in Fig. 2).)

The motivation for combining Metke with Moore is that Metke's method can be applied to almost any type of gaming method. Metke specifies using it for amusement games and Bingo would therefore be a type of amusement game.

Therefore, it would be obvious to anyone skilled in the art of gaming at the time of the invention to combine the teachings of Metke with Moore so that you would get multiplayer type Bingo game where now new players can enter into the game and enhance gameplay as well as payout.

Regarding claims 8, 85, Moore in combination with Metke discloses the act of determining a payout includes determining, from a predetermined payout table, a payout to at least one player (It would be obvious to have a payout table for any type of casino related game machine including Bingo and in the game of Bingo, it would also be obvious to have at least one winner.).

Claims 9-85 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moore (US 20040059445 A1) in view of Metke (US 6565435 B2) and Bryant (US 20040077422 A1) and Torango (US 2002/0042297 A1).

Regarding claim 9, Moore in combination with Metke discloses a game having an associated game session, the game comprising:

one or more game pieces assigned to each player (**Obvious in Bingo**), wherein each game piece includes one or more game cards (**Obvious in Bingo**), wherein each of the one or more game cards includes a plurality of cells arranged in a pattern (**Obvious in Bingo**), wherein each of the one or more game pieces includes a set of game cards having a same set of game patterns (**Obvious in Bingo**), and wherein the calls of each of the one or more game cards contains content chosen randomly from a predetermined set of cell content (**Obvious in Bingo**);

a winning cell matching pattern for the game session (**Obvious in Bingo**);

a fixed number of winning cell content drawn from a known set of content (**Obvious in Bingo**);

and a payout based upon a predetermined payout table (**It would be obvious to have a payout table for any type of casino related game machine including Bingo and in the game of Bingo, it would also be obvious to have at least one winner.**).

Regarding claim 10, Moore in combination with Metke discloses every game piece assigned in a game session is unique (**It would be obvious to have every game piece which is made up of game cards unique in Bingo.**).

Regarding claims 11, 12, 13, 14, 15, Moore in combination with Metke discloses every game piece includes a set of game cards having at least one of different card patterns, a winning pattern, and cell content (**It would be obvious that to have unique**

game cards with winning patterns where each game card is made up unique numbers or symbols that are commonly used in the game of Bingo.).

Regarding claim 16, Moore in combination with Metke discloses the cell content may be at least one of a free, a blank and a wild spot **(Obvious in the game of Bingo. Also supported by Moore, Paragraph 0005.).**

Regarding claim 17, Moore in combination with Metke discloses the predetermined set of symbols is divided into subsets, at least one of which is assigned for use in a particular group of cells **(Obvious to the game of Bingo. Each column has its own range of numbers.).**

Regarding claim 18, Moore in combination with Metke disclose the game card is a bingo game card **(Obvious).**

Regarding claim 19, Moore in combination with Metke and Bryant disclose the player pays to play with at least one of money and loyalty points.

Moore does not disclose using loyalty points for a way to player to pay in Bingo but Bryant does **(Bryant, Abstract).**

The motivation for combining Bryant with Moore is because Bryant implements using loyalty points as a form of payment on all types of gaming machines including Keno and Bingo which is what Moore's gaming machine is.

Therefore, it would obvious to anyone skilled in the art of gaming at the time of the invention to combine the teachings of Bryant with Moore because players would have an alternative method of payment to play Bingo on a gaming machine and therefore increase game play of the game.

Regarding claims 20, 33, 34, 35, Moore in combination with Metke and Bryant discloses the player pays by at least one of cash, a debit card, a credit card, and account credit, and a loyalty program credit **(Bryant, Abstract and Paragraph 0024)**.

Regarding claims 21, 22, 78, Moore in combination with Metke and Bryant discloses the player is permitted to subscribe to play multiple game sessions **(Obvious since there is at least one winner per Bingo game session and therefore, a player could continue playing in the next game session as well.)**.

Regarding claim 23, Moore in combination with Metke and Bryant discloses each player plays against an operator of the game **(As it is understood from the specification of the applicant and of the references cited, the operator of the Bingo game is the person who controls the random calling of numbers or symbols during gameplay. However, if the operator also has game cards and is playing Bingo as well, then it would be obvious for the operator to be competing with all the other players of Bingo.)**.

Regarding claim 24, Moore in combination with Metke and Bryant discloses each player is not required to observe the game session in order to play the game **(Moore, Paragraph 12)**.

Regarding claim 25, Moore in combination with Metke and Bryant discloses each player is permitted to observe the game session **(If a player is playing the game, then it would be obvious that the player is permitted to observe the game session, otherwise, the player would not be playing.)**.

Regarding claim 26, Moore in combination with Metke and Bryant discloses each player is permitted to observe on at least one of a television, a personal computer, kiosk, handheld device, a telephone having a display, and in person (**Looking at Figure 1 of Moore, it shows all the bingo cards being displayed for example on a large tv screen for a large number of participants to view at once. It would also be obvious then to implement this on other types of displays that can view this information such as on a personal computer, a telephone, or a kiosk.**)

Regarding claim 27, Moore in combination with Metke and Bryant discloses the payout for winning depends upon the number of winning cell content drawn before obtaining the winning pattern (**Obvious in the game of Bingo. It is common knowledge that in Bingo, you need to have cell content usually in the pattern of a horizontal, vertical, or diagonal line. Other patterns can be chosen but these are the most common.**).

Regarding claim 28, Moore in combination with Metke and Bryant discloses the payout for winning decreases as the number of winning cell content drawn increases to obtain the winning pattern (**Obvious that the payout for winning decreases since more cell content are drawn which increases the chances of other players achieving the winning pattern and winning the game.**).

Regarding claim 29, Moore in combination with Metke and Bryant discloses the payout for winning to a player is increased with a corresponding increase in payment by the player to play (**Obvious that when players contribute to a pool of money, the pool would therefore increase.**).

Regarding claim 30, Moore in combination with Metke and Bryant discloses the payout to a player for winning the game is divided among each of a plurality of winning players **(Obvious since if you have a plurality of winners in a Bingo game session, the total pot would be divided among each winner.)**.

Regarding claim 31, Moore in combination with Metke and Bryant discloses there may be at least one progressive jackpot **(It would be obvious to implement a progressive jackpot if in a Bingo game there are no winners. Also by using the AMOE, the jackpot would progressively get bigger as more people play.)**.

Regarding claim 32, Moore in combination with Metke and Bryant discloses the payout table is not directly determined by the odds of winning with or without a fee to the gaming operator **(It is obvious that the payout table is based on the number of people playing the game and the amount of money that each player may or may not pay to enter into each game. The odds of winning for Bingo are based on the total number of cell numbers that can be on a Bingo Card as well as on the number of people playing.)**.

Regarding claim 36, Moore in combination with Metke and Bryant discloses the game sessions are run continually **(It would be obvious that game sessions are run continually, otherwise they would not be continuous and you would not have a complete game.)**.

Regarding claim 37, Moore in combination with Metke and Bryant discloses the winning cell content is randomly chosen manually **(Moore, Column 6, Lines 33-48.**

Obvious since it is the game operator who randomly picks cell content manually.).

Regarding claim 38, Moore in combination with Metke and Bryant discloses the winning cell content is entered into a computer system **(Moore, Column 8, Lines 57-59.)**.

Regarding claim 39, Moore in combination with Metke and Bryant discloses a game playing computer system randomly picks the winning cell content from a predetermined set of content **(Moore, Column 8, Lines 57-59)**.

Regarding claims 40, 41, Moore in combination with Metke and Bryant discloses after each winning cell content is drawn, the computer system performs acts of:

determining whether any of the game cards being played attains the winning cell matching pattern **(Moore, Column 9, Lines 2-9)**,and;

determining the payout based upon the predetermined payout table **(It would be obvious to determine the payout based on the payout table after the winner or winners has been selected.)**.

Regarding claims 42, 45, Moore in combination with Metke and Bryant discloses the player manually daubs his or her at least one game card **(Obvious since in traditional Bingo games, all players daub their game card.)**.

Regarding claims 43, 46, Moore in combination with Metke and Bryant discloses the player tells the gaming operator or computer system that the game winning pattern has been matched **(In traditional Bingo, it would be up to the player to notify the**

gaming operator that he has a winning pattern. The computer system however will automatically inform everyone if there is a winner. Moore, Abstract.).

Regarding claim 44, 47, Moore in combination with Metke and Bryant discloses the player and the winning game card must be verified and authenticated by the gaming operator or computer system **(Obvious in traditional Bingo. The Computer system would automatically however authenticate the game card since it is the computer that generated the game card in the first place. Moore, Summary of Invention.).**

Regarding claim 48, Moore in combination with Metke and Bryant discloses the computer system additionally automatically daubs each gamecard cell being played in a game session containing the winning content **(Moore, Figure 1.).**

Regarding claims 49, 50, 51, 52 Moore in combination with Metke and Bryant discloses a game playing computer system displays to all players when there is a winner **(Moore, Column 5, Lines 64-67.).**

Regarding claims 53, 54, Moore in combination with Metke and Bryant discloses a game playing computer system determines at least one of a game card or a player closest to winning **(If everyone has access to viewing everyone's game card as shown in Figure 1 of Moore, then it would be obvious to determine which player is closest to winning.).**

Regarding claim 55, 56, Moore in combination with Metke and Bryant discloses the computer system automatically notifies a player of the game result **(Moore, Column 9, Lines 5-9.).**

Regarding claims 57, 58, Moore in combination with Metke and Bryant discloses the computer system notifies a player by at least one of a group including a telephone, a pager, a fax, a mail message, a television notification, personal computer message, a handheld device, and a kiosk **(Moore, Figure 1. Figure 1 can be implemented using a television, telephone, personal computer, handheld device and a kiosk. It would also be obvious to use other types of messaging such as an email or fax.)**.

Regarding claim 59, 60, 61, 62, 63, 76, Moore in combination with Metke and Bryant discloses a player may access his or her results for past gaming sessions remotely at any time **(Bryant, Summary of Invention. It would be obvious that if a player keeps track of his or her gaming sessions, then they would be able to access it at any time.)**.

Regarding claims 64, 65, Moore in combination with Metke and Bryant discloses the game sessions are run continually, and wherein advertising streams inserted into the display during the game session.

Moore does not teach using advertising streams during a game session but Torango does **(Torango, Paragraph 0190)**.

The motivation for combining them is that both Moore and Torango are Bingo games implemented on a computer except that Kim teaches how you can implement ads on the game while playing Bingo as well.

Therefore, it would have been obvious to anyone skilled in the art of gaming at the time of the invention to combine the teachings of Torango with Moore.

Regarding claims 67, Moore in combination with Metke and Bryant and Torango discloses the game and its associated game session are played using one or more computer systems **(Moore, Summary of Invention. The game was meant to be played on multiple computer systems.)**.

Regarding claims 68, 69, Moore in combination with Metke and Bryant and Torango discloses the cells of each of the one or more game cards is chosen randomly by a computer system **(Moore, Paragraph 33, "...randomly selected numbers are called in succession by the game sponsor or operator.")**;

Regarding claims 70, 79 Moore in combination with Metke and Bryant and Torango discloses a system for playing a game on a computer system, the system comprising:

means for allowing game players to enter to play a wagering game of chance **(Moore, Abstract)**;

means for assigning one or more game pieces to each player where each game piece comprises one or more game cards and wherein, each of the one or more game cards has cells arranged in a pattern, wherein each of the one or more game pieces includes a set of game cards having a same set of game card patterns, and wherein the cells of each of the one or more game card contain content chosen randomly from a predetermined set of cell content **(Moore, Summary of Invention)**;

means for choosing a winning cell matching pattern for the game session **(Moore, Summary of Invention. Obvious in the game of Bingo)**.

means for drawing a vixed number of winning cell content from a known set of content (**Moore, Summary of Invention. Obvious in the game of Bingo**);

means for determining one or more winning game cards (**Moore, Summary of Invention. Obvious in the game of Bingo**);

means for paying out winnings according to a predetermined payout table (**Moore, Summary of Invention. Obvious in the game of Bingo**).

Regarding claim 73, Moore in combination with Metke and Bryant and Torango discloses comprising means for notifying all game players of winning game cards as they occur (**Moore, Figure 1. Obvious that all game players would be notified of winning game cards since all players have access to view each other's cards.**).

Regarding claim 74, Moore in combination with Metke and Bryant and Torango discloses notifying all game players of the identity of a winning game player (**Moore, Claim 37.**).

Regarding claim 75, Moore in combination with Metke and Bryant and Torango discloses allowing game players to view the game session proceedings as they occur (**Moore, Figure 1**).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas K. Cheriyan whose telephone number is 571-270-3225. The examiner can normally be reached on Mon-Fri 7:30AM-5:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai can be reached on 571-272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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